INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Discussion	6
Appendix	10

CITATIONS

Cases:	
Bailey v. *United States*, 31 F. Supp. 778	8
Becker v. *St. Louis Trust Co.*, 296 U. S. 48	7
Bingham v. *United States*, 296 U. S. 211	6, 7, 8
Broderick v. *Keefe*, 112 F. (2d) 293	8
Chase Nat. Bank v. *United States*, 116 F. (2d) 625	8
Helvering v. *Hallock*, 309 U. S. 106	6, 7, 8
Helvering v. *St. Louis Trust Co.*, 296 U. S. 39	7
Industrial Trust Co. v. *United States*, 296 U. S. 220	6, 7
Walker v. *United States*, 83 F. (2d) 103	8
Statute:	
Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 302	10
Miscellaneous:	
T. D. 4296, IX–2 Cum. Bull. 427	8
T. D. 4331, XI–1 Cum. Bull. 330	8
T. D. 5032, 1941–1 Cum. Bull. 427	8
Treasury Reglations 37:	
Art. 32	8
34	8
35	8
Treasury Regulations 63:	
Art. 27	8
29	8
30	8
Treasury Regulations 68:	
Art. 25	8
27	8
Treasury Regulations 70 (1926 Ed.):	
Art. 27	8
Treasury Regulations 70 (1929 Ed.):	
Art. 27	8

Miscellaneous—Continued.

	Page
Treasury Regulations 80 (1934 Ed.):	
Art. 25	8
Art. 27	8
Treasury Regulations 80 (1937 Ed.):	
Art. 13	11
Art. 15	11
Art. 19, as amended	12
Art. 20	14
Art. 25, as amended	8, 15
Art. 26, as amended	16
Art. 27, as amended	8, 17
Treasury Regulations 105:	
Art. 81.25	8
Art. 81.27	8

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 233

JAMES R. WASHER, EXECUTOR, ESTATE OF BENJAMIN SEELIG WASHER, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 15) is unreported. The opinion of the Circuit Court of Appeals (R. 58–63) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 16, 1942 (R. 58). The petition for a writ of certiorari was filed July 15, 1942. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the proceeds of certain policies of insurance on the life of the decedent (after allowance of the $40,000 exemption) are includible in his gross estate for purposes of the federal estate tax under Section 302 (g) of the Revenue Act of 1926, as amended.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set out in the Appendix, *infra,* pp. 10–18.

STATEMENT

The facts as stipulated (R. 25–52) and found by the Board of Tax Appeals (R. 15), supplemented by the pleadings (R. 4–14), may be summarized as follows:

The decedent, Benjamin S. Washer, died February 5, 1935, a resident of Kentucky. James R. Washer is the executor of his estate (R. 4, 13, 25).

At various times between 1905 and 1932, the decedent took out fourteen policies of insurance on his own life in The Northwestern Mutual Life Insurance Company and four in John Hancock Mutual Life Insurance Company (R. 27–28); the effective dates and face values of those policies, as listed in the record, were as follows (R. 32):

The Northwestern Mutual Life Insurance Company

Effective date:	Amount
Nov. 29, 1905	$2,000.00
Aug. 28, 1911	3,000.00
Sept. 8, 1911	2,000.00
Aug. 9, 1913	6,000.00
May 25, 1917	10,000.00
Jan. 9, 1919	7,000.00
June 30, 1921	10,000.00
June 30, 1921	10,000.00
Jan. 17, 1922	3,000.00
Aug. 1, 1923	10,000.00
Sept. 28, 1923	10,000.00
Dec. 24, 1925	15,000.00
Nov. 25, 1929	12,000.00
Jan. 20, 1930	23,000.00

John Hancock Mutual Life Insurance Company

Effective date:	Amount
July 7, 1937 [1]	$5,000.00
May 6, 1929	10,000.00
Feb. 16, 1932	10,000.00
Feb. 16, 1932	40,000.00

The original beneficiary under each of the policies was Amy D. Washer, the decedent's wife (R. 28, 29).

The decedent reserved the right to change the beneficiary and the manner of payment, to borrow upon security of the policies and to surrender the same for their cash value. (Unprinted minutes of Board proceedings, p. 15;[2] also R. 35, 37, 42, 43, 45.)

On December 19, 1932, the following endorsement was affixed to the Northwestern policies (R. 36):

---

[1] This date is incorrect; the correct date is July 7, 1927.

[2] The parties stipulated (R. 52) that the stenographic transcript of the Report of Proceedings before the Board, item 6 of the Amended Designation of Contents of Record on Review (R. 53), was not to be printed, but might be referred to by either party to the same extent as if printed.

EXHIBIT E

Milwaukee, Wis., Dec. 19, 1932. The insured hereby waives the power to exercise the rights and privileges conferred upon him by the terms of this policy without the written consent of Amy D. Washer, wife and beneficiary. In event of the death of said Amy D. Washer before this policy shall become payable, the power to exercise such rights and privileges shall vest solely in the insured. All policy provisions inconsistent herewith are suspended.

H. R. RICKER, *Asst. Secretary.*

With respect to the Hancock policies, the decedent, on January 18, 1933, waived the right to change the beneficiary or method of payment without the consent of his wife during her lifetime, still reserving, however, the right to change the contingent beneficiaries from time to time; decedent also reserved the right (but only with the consent of his wife during her lifetime) to procure loans upon the policies or to surrender them for their cash value and to make any changes without consent of the contingent beneficiaries (R. 46, 48).

On December 17, 1934, another endorsement was affixed to the Hancock policies which provided that the decedent could change the contingent beneficiaries only with the written consent of the wife during her lifetime (R. 49).

At the date of death of the decedent the policies provided that the proceeds be held by the insurer and that interest be paid thereon to the wife during her life and then to the two sons during their lives. Upon death of either son, leaving children surviving, the share of that son was to be paid in one sum to his children. In the event that the insured's wife should survive the sons and their children, she was to have the privilege of receiving the proceeds in annual installments and, upon her death, the proceeds then in the company's hands were to be commuted and paid to the decedent's estate (R. 38–40, 49–52, 28–29).

The decedent left surviving him his wife and his two sons, Benjamin S. Washer, Jr., 29 years old at the time of the decedent's death, and James R. Washer, then 25 years old. James R. Washer was then married and had a child three years of age; another child was born shortly thereafter. All of such persons were living at the time the stipulation of facts was filed (R. 29).

At the date of decedent's death, there was insurance under the Northwestern policies in the aggregate face amount of $123,000, plus additions of $201 and post mortem dividends of $1,225.17, and insurance under the Hancock policies in the aggregate face amount of $65,000, plus additions of $285.10 and post mortem dividends of $284.40, or a total of $189,995.67, all on the life of the decedent. The Commissioner, in determining the deficiency, in-

cluded the foregoing amounts in the gross estate (together with other insurance not here in controversy) to the extent that the aggregate was in excess of $40,000 (R. 27–28).

Upon review, the Board of Tax Appeals held that such action of the Commissioner was erroneous, but the court below reversed the decision of the Board.

DISCUSSION

Since the insured retained rights and powers in all the policies which he could exercise in the event that he should survive his wife, the proceeds of these policies must be included in his gross estate under Section 302 (g) of the Revenue Act of 1926. The retention of those rights, based upon the contingency of survivorship, brings this case within the principles of *Helvering* v. *Hallock,* 309 U. S. 106. True, this Court had once held that such policies were not taxable in *Bingham* v. *United States,* 296 U. S. 211, and *Industrial Trust Co.* v. *United States,* 296 U. S. 220.[3] But both these cases rested

[3] There was also an alternative ground for the decision in the *Bingham* and *Industrial Trust Co.* cases, namely, that all the policies in question had been taken out and the rights therein had become irrevocably fixed long before the enactment of the first Federal estate tax law which specifically taxed insurance proceeds (the Revenue Act of 1918). Indeed, Justices Brandeis, Stone, and Cardozo concurred specially upon that ground.

That alternative ground can have, of course, no application here. Not only were the great bulk of the policies in the instant case taken out after the 1918 Act, but even as to those taken out before, the insured had retained rights to change

upon *Helvering* v. *St. Louis Trust Co.*, 296 U. S. 39, and *Becker* v. *St. Louis Trust Co.*, 296 U. S. 48, which were overruled in the *Hallock* case. And since the decision in the *Hallock* case, the lower courts have assumed that the principles there laid down destroyed the basis for the *Bingham* and *Industrial Trust Co.* decisions, and have ruled that the *Hallock* case applies to render insurance proceeds taxable where the decedent retained rights based upon survivorship.[4] See, particularly, dis-

---

beneficiaries, surrender for cash, etc., which he relinquished for the first time in 1932, long after the enactment of the relevant statutes.

[4] The case for taxing the insurance proceeds where the insured has retained rights based upon survivorship is much stronger than the case of the trusts involved in the *Hallock* case. For, Section 302 (g) in sweeping terms requires the proceeds of all policies of life insurance taken out by the decedent to be included in his gross estate. Nowhere in the provisions of Section 302 (g) is there any requirement that the insured shall have retained rights of any character in the policies. The critical consideration is that life insurance is *per se* a substitute for a testamentary disposition, and under the all-inclusive language of Section 302 (g) it should not matter whether the insured has retained rights in the policies. In the case of an ordinary *inter-vivos* trust, the existence of such rights may be necessary to convert an otherwise non-testamentary disposition into one that is a substitute for the transfer of property at death. But in the case of life insurance, the very nature of the transaction marks it as a substitute for a testamentary disposition, and there is no reason why the obvious intention of Congress as expressed in Section 302 (g) should not be given effect.

However, in view of the unsatisfactory state of the Treasury regulations prior to 1941 with respect to this broad position, the Government is not anxious to press that point in this

cussion by Judge A. N. Hand in *Chase Nat. Bank* v. *United States,* 116 F. (2d) 625 (C. C. A. 2d). Cf. *Bailey* v. *United States,* 31 F. Supp. 778 (C. Cls.); *Broderick* v. *Keefe,* 112 F. (2d) 293 (C. C. A. 1st).

Thus, although it is true that there may technically be a conflict in principle with the *Bingham* and *Industrial Trust Co.* decisions and with decisions of the lower courts following those cases (e. g., *Walker* v. *United States,* 83 F. (2d) 103 (C. C. A. 8th)), the basis for that conflict has been removed by the *Hallock* case, and we know of no decision to

---

case. Prior to 1929, the regulations shed very little, if any, light upon the issue. See Articles 32, 34–35, Regulations 37; Articles 27, 29–30, Regulations 63; Articles 25, 27, Regulations 68; Article 27, Regulations 70 (1926 Ed.). But in Article 27 of Regulations 70 (1929 Ed.) it was specifically provided that insurance might be taxed irrespective of the retention of legal incidents of ownership. These provisions, however, were withdrawn on August 6, 1930, by T. D. 4296, IX–2 Cum. Bull. 427. See also T. D. 4331, XI–1 Cum. Bull. 330; Article 25, 27, Regulations 80 (1934 and 1937 Eds.). On January 10, 1941, the Treasury undertook to eliminate the confusion that had theretofore existed on this broad question by promulgating a ruling that the statute would be applied to the proceeds of all policies of insurance taken out by the decedent, irrespective of the retention of so-called incidents of ownership; but in recognition of the pre-existing confusion, the new ruling was issued so as to have prospective effect only. T. D. 5032, 1941–1 Cum. Bull. 427; Articles 81.25, 81.27, Regulations 105.

Accordingly, the Government expects to raise the broad issue in cases arising under the new regulations, but it is not necessary to do so here, for, the decedent in this case in fact retained rights based upon survivorship, so that the principles of the *Hallock* case apply here in any event.

the contrary subsequent thereto. In these circumstances, we think that it is unlikely that any lower court will now reach a result contrary to the decision herein, and that therefore there is not such a conflict as to call for review by this Court.

Although the petition raises various other questions, including the scope of review in the court below, none of them appears to have any merit and they certainly do not warrant certiorari.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
ARNOLD RAUM,
L. W. POST,
Special Assistants to the Attorney General.

AUGUST 1942.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death;

* * * * *

(c) (as amended by Joint Resolution of March 3, 1931, Public, No. 131, Seventy-first Congress, and by section 803 (a) of the Revenue Act of 1932). To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

(d) (as amended by Section 401 of the Revenue Act of 1934, c. 277, 48 Stat. 680)

(1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

* * * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

* * * * *

Treasury Regulations 80 (1937 ed.):

ART. 13. *Property of decedent at time of death.*—It is designed by the foregoing provision of the statute that there shall be included in the gross estate all property of the decedent, whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death, except real property situated outside the United States.

* * * * *

ART 15. *Transfers during life.*—The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are sub-

ject to the tax: * * * (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see article 19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, * * *.

* * * * *

ART. 19 (as amended by T. D. 4868, 1938–2 Cum. Bull. 355, 356). *Transfers with right retained to designate who shall possess or enjoy.*—The statute (section 302 (c), as amended) provides that, except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate shall embrace all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for a period not ascertainable without reference to his death, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof.

This provision of the statute covers, in the main, transfers to which also apply the provisions of certain other subdivisions of section 302. Thus, to the extent that the enjoyment of the transferred property is

subject to any change through the exercise of a power by the decedent alone or in conjunction with any other person or persons to alter, amend, revoke, or terminate, the provisions of section 302 (d), as amended, and of article 20 will apply. Or, if the decedent reserved to himself a general power of appointment and the property passed in his lifetime or by his will pursuant to the exercise of such power, the property may be required by section 302 (f), as amended, to be included in the gross estate, and in such case the provisions of article 24 will apply without regard to when such power was created.

A transfer of the kind dealt with in this article, when not also falling within the provisions of some other subdivision of section 302, requires the inclusion of the transferred property within the gross estate, if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and the right to so designate was retained by or reserved to the decedent alone for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and the right to so designate was retained by or reserved to the decedent alone or in conjunction with any other person or persons for decedent's life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for any period not ascertainable without reference to his death.

* * * * *

ART. 20. *Transfers with power to change the enjoyment.*—(*a*) *Transfers included.*—Subdivision (d) of section 302 of the Revenue Act of 1926, as amended, embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate. (See article 15.)

* * * * *

(*b*) *Taxability.*—The property or the interest or interests therein so transferred shall be included in the gross estate if coming within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if the decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the decedent's death occurred at any time subsequent to the transfer, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

* * * * *

ART. 25 (as amended by T. D. 5032, 1941–1 Cum. Bull. 427). *Taxable insurance.*—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (*a*) All insurance receivable by, or for the benefit of, the estate; (*b*) all other insurance to the extent that it exceeds in the aggregate $40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system. Insurance receivable by beneficiaries other than the estate is considered to have been taken out by the decedent where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so taken out, even though the application was made by the decedent, if no part of the premiums or

other consideration was paid either directly or indirectly by him. Where a portion of the premiums or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been taken out by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance.

Life insurance not includible in the gross estate under the provisions of subdivision (g) of section 302 and article 26, 27, or this article of these regulations may, depending upon the facts of the particular case, be includible under some other subdivision of section 302 and the articles of these regulations pertaining thereto, such as subdivision (c) in the case of insurance taken out by the decedent prior to the date of Treasury Decision 5032 and also transferred by him prior to such date in contemplation of death.

ART. 26 (as amended by T. D. 5032, supra) *Insurance in favor of the estate.*— The statute requires the inclusion in the gross estate of all insurance receivable by the executor or administrator or payable to the decedent's estate, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance effected to provide funds to meet the estate tax, and any other taxes, debts, or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes, debts or charges. The full amount of the proceeds so receivable, without the benefit

of any exemption, forms a part of the gross estate, though all the premiums or other consideration wherewith the insurance was acquired may have been paid by a person other than the decedent. If the decedent procured insurance in favor of another person or corporation as collateral security for a loan or other accommodation, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death will be deductible in determining the net estate, and the interest thereon will be deductible in accordance with the provisions of article 36.

ART. 27 (as amended by T. D. 5032, supra) *insurance receivable by other beneficiaries.*—The amount in excess of $40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate as follows:

(1) To the extent to which such insurance was taken out by the decedent upon his own life (see article 25) after January 10, 1941, the date of Treasury Decision 5032, and

(2) To the extent to which such insurance was taken out by the decedent upon his own life (see article 25) on or before January 10, 1941, and with respect to which the decedent possessed any of the legal incidents of ownership at any time after such date or, in the case of a decedent dying on or before such date, at the time of his death.

Legal incidents of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to

surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possesses a legal incident of ownership if his death is necessary to terminate his interest in the insurance, as for example if the proceeds would become payable to his estate, or payable as he might direct, should the beneficiary predecease him.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1942

Office - Supreme Court, U. S.
FILED
JUL 15 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1941.

No. 233

COMMISSIONER OF INTERNAL REVENUE,

Respondent and Petitioner below,

against

JAMES R. WASHER, Executor, Estate of Benjamin Seelig Washer,

Petitioner and Respondent below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

EUGENE L. GAREY,
Counsel for Petitioner,
63 Wall Street,
New York City, N. Y.

WILLIAM HELFER,
PETER KEBER,
FRANK X. CRONAN,
of Counsel.

INDEX

PAGE

PETITION:

I—Summary Statement of the Matter Involved 1

II—Reasons Relied on for Allowance of the Writ 4

BRIEF:

I—Opinions of the Courts Below 7

II—Jurisdiction 8

III—The Question Presented 8

IV—Statement of the Case 8

V—Specification of Errors 9

VI—Summary of the Argument 9

VII—Argument—

POINT A—Section 302(g) of the Revenue Act of 1926 does not require the inclusion of all or any of the proceeds of the policies on the life of the decedent within his gross estate because the decedent possessed no legal incidents of ownership in said policies prior to his death 10

POINT B—The applicability of Section 302(g) was not properly before the Circuit Court of Appeals and the said Court should not have considered this statute 14

POINT C—In any event, the Circuit Court of Appeals should have limited the amount of the proceeds of the policies includible within the gross estate of the decedent to the value of the interest retained by the decedent in such policies 16

PAGE

POINT D—In any event, the Circuit Court of Appeals should have excluded the proceeds of all policies contracted for prior to the effective date of the Revenue Act of 1918 17

CONCLUSION 17

CASES CITED

Bingham v. United States, 296 U. S. 211 ..... 4, 10, 12, 13, 17

Central Nat. Bank of Cleveland v. United States, 41 F. Supp. 239 ..... 5, 16

Chase Nat. Bank v. United States, 278 U. S. 327 ..... 4, 10

Commissioner v. Betts, 123 F. (2d) 534 ..... 4, 14

Commissioner v. Kaplan, 102 F. (2d) 329 4

Commissioner v. Kellogg, 119 F. (2d) 54 ..... 4, 11, 13

Commissioner v. McLean, 127 F. (2d) 942 ..... 5, 12, 16

General Utilities & Operating Co. v. Helvering, 296 U. S. 200 ..... 4, 15

Helvering v. Dunning, 118 F. (2d) 341 ..... 4, 14

Helvering v. Hallock, 309 U. S. 106 ..... 5, 11, 12, 13, 16, 17

Helvering v. Parker, 84 F. (2d) 838 17

Helvering v. Richter, 312 U. S. 561 15

Helvering v. Salvage, 297 U. S. 106 ..... 4, 15

Helvering v. Tex-Penn Oil Co., 300 U. S. 481 ..... 4, 15

Helvering v. Wood, 309 U. S. 344 ..... 4, 15

Hormel v. Helvering, 312 U. S. 552 15

Industrial Trust Co. v. United States, 296 U. S. 220 ..... 4, 11, 12, 13, 17

PAGE

Levy's Estate v. Commissioner, 65 F. (2d) 412 11

Lewellyn v. Frick, 268 U. S. 238 17

Reinecke v. Northern Trust Co. 278 U. S. 339 ..... 5, 14, 16

Walker v. United States, 83 F. (2d) 103 ..... 4, 11

STATUTES CITED

Judicial Code, Sec. 240, 43 Stat. 938 8

Regulation 80, Article 25, 1934 Edition 5, 11

Revenue Act of 1926:

Sec. 302(d) 4, 15

Sec. 302(g) 4, 8, 9, 10, 11, 14, 15, 17

Revenue Act of 1934:

Sec. 501 ..... 1, 14

U. S. C. A. Title 26, Sec. 1141 15

U. S. C. A. Title 28, Sec. 347 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. .....

COMMISSIONER OF INTERNAL REVENUE,
Respondent and
Petitioner below,

against

JAMES R. WASHER, Executor, Estate of
Benjamin Seelig Washer,
Petitioner and
Respondent below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, The Supreme Court of the United States:

Your petitioner respectfully shows:

I

Summary Statement of the Matter Involved

The Commissioner of Internal Revenue determined a deficiency in estate tax liability and gave petitioner the statutory notice thereof (§501, Revenue Act of 1934) on or about December 9, 1937 (R. 9-13).* Upon petition to

* References in parentheses are to pages of the Record, unless otherwise indicated.

the Board of Tax Appeals (R. 4-13), the Board, on February 12, 1940, reversed the determination of the Commissioner and ordered and decided that there was no deficiency (R. 15-16).

An appeal from said decision was taken by the Commissioner on May 3, 1940 (R. 16-23) to the Circuit Court of Appeals for the Sixth Circuit, which, on April 16, 1942, reversed the decision of the Board of Tax Appeals and remanded the cause to the Board for further proceedings consistent with the Court's opinion (R. 58).

The question involved on said appeal was whether the Board of Tax Appeals correctly decided that the proceeds of life insurance policies on the life of Benjamin Seelig Washer, hereinafter referred to as "decedent", payable to beneficiaries other than decedent's executor, should be excluded from decedent's gross estate for Federal estate tax purposes.

The facts are stipulated (R. 25-52). The decedent, a resident of Kentucky, died February 5, 1935 (R. 25), at the age of fifty-three (R. 29). At his death there were outstanding fourteen policies of insurance upon his life issued by Northwestern Mutual Life Insurance Company and four issued by John Hancock Mutual Life Insurance Company, in each of which his wife, Amy D. Washer, was named as beneficiary. The aggregate proceeds of the eighteen policies above mentioned were $189,995.67 (R. 28). Six of the Northwestern policies, totaling $30,000 face value, were issued prior to the effective date of the Revenue Act of 1918 (R. 32). As originally written, the policies reserved to the insured the right to change the beneficiary and mode of payment, and also the right to borrow upon the policies and/or to surrender the same for their cash value (R. 35, 45).

On December 19, 1932, the decedent caused endorsements to be affixed to the Northwestern policies wherein he waived the power to exercise the rights and privileges conferred upon him by the terms of the policies without the written

consent of his wife, the beneficiary. The endorsement further provided that in the event of the death of the beneficiary before the proceeds became payable, the power to exercise such rights and privileges should vest solely in the decedent (R. 36). On January 18, 1933, he likewise by endorsement to the Hancock policies waived the right to change the beneficiary, the method of payment or the right to borrow upon or surrender the policies without the written assent of his wife (R. 46); and by endorsement dated December 17, 1934, the right to change the contingent beneficiaries was made dependent upon the written consent of the beneficiary (R. 49).

At his death there survived the decedent his widow, his two sons, aged twenty-nine and twenty-five, respectively, and his grandson, aged three. Another grandchild was born shortly thereafter (R. 29).

The proceeds of all of the policies were to be held by the respective insurers and interest paid to the beneficiary during her life, then to the two sons during their lives, and, upon the death of either son, his share to be paid to his surviving child or children, and if none, to be added to the other son's share, if living, otherwise to the child or children of such other son. In the event both sons should predecease their mother leaving no child or children surviving, she had the right, in accordance with certain options, to receive the principal in installments, and if she dies before receiving the entire principal, then any proceeds remaining unpaid in the companies' hands are to be paid to the decedent's representatives (R. 39, 49-50, 29).

Thus the decedent irrevocably divested himself of all incidents of ownership over the policies, retaining only (a) the contingent power to exercise the rights and privileges conferred by the policy in the event the beneficiary should predecease the decedent, and (b) the extremely remote right of his estate to receive any unpaid proceeds of the policies upon the death of the beneficiary, but only in the event she survived all the contingent beneficiaries and had not herself received the entire proceeds of the policies.

II

Reasons Relied on for Allowance of the Writ

1. The decision of the Circuit Court of Appeals is contrary to the decisions of this Court in *Bingham* v. *United States,* 296 U. S. 211, 80 L. ed. 160, and *Industrial Trust Co.* v. *United States,* 296 U. S. 220, 80 L. ed. 191.

2. The decision of the Circuit Court of Appeals is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Walker* v. *United States,* 83 F. (2d) 103, and apparently in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Commissioner* v. *Kellogg,* 119 F. (2d) 54, the decision of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner* v. *Betts,* 123 F. (2d) 534, the decision of the Circuit Court of Appeals for the Fourth Circuit in *Helvering* v. *Dunning,* 118 F. (2d) 341, and the decision of the Circuit Court of Appeals for the First Circuit in *Commissioner* v. *Kaplan,* 102 F. (2d) 329.

3. The decision of the Circuit Court of Appeals is apparently in conflict with the decisions of this Court in *Helvering* v. *Wood,* 309 U. S. 344, 84 L. ed. 796; *Helvering* v. *Tex-Penn Oil Co.* 300 U. S. 481, 81 L. ed. 755; *Helvering* v. *Salvage,* 297 U. S. 106, 80 L. ed. 512; and *General Utilities & Operating Co.* v. *Helvering,* 296 U. S. 200, 80 L. ed. 154; in so far as respondent, Commissioner of Internal Revenue, has been permitted to claim that decedent retained incidents of ownership in each of the policies within the contemplation of Section 302(g) of the Revenue Act of 1926 (see *Chase Nat. Bank* v. *United States,* 278 U. S. 327, 73 L. ed. 404), whereas in his notice of deficiency addressed to petitioner the respondent expressly acknowledged that decedent possessed no incidents of ownership whatever in said policies and relied entirely upon the claimed application of Section 302(d).

4. The decision of the Circuit Court of Appeals is apparently in conflict with the decisions of this Court in *Helvering* v. *Hallock,* 309 U. S. 106, 84 L. ed. 604; and *Reinecke* v. *Northern Trust Co.,* 278 U. S. 339, 73 L. ed. 410, and with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Commissioner* v. *McLean,* 127 F. (2d) 942, and with the Court of Claims in *Central National Bank of Cleveland* v. *United States,* 41 F. Supp. 239, 247-8, for the reason that the Court held that not merely the value of the interest retained but the entire proceeds of the policies were taxable, notwithstanding the fact that the contingency upon which the decedent or his estate might possibly have received some portion of the proceeds was concededly "extremely remote".*

5. The decision of the Circuit Court of Appeals goes far beyond the Treasury Regulations in effect on February 5, 1935, the date of the decedent's death (see Article 25 of Regulation 80, 1934 Edition).

6. The decision of the Circuit Court of Appeals in taxing the proceeds of insurance policies where the possibility retained by the decedent was concededly "extremely remote" presents a serious departure from long-established interpretation of the statute, and affects countless insurance policies now in force or which have recently matured. In the light of such circumstances the uncertainty created by the decisions of the various circuit courts of appeals, particularly in their construction of the decision in *Helvering* v. *Hallock, supra,* should be removed and the law settled.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and

* See opinion of the Court of Appeals, 127 F (2d) 446, 449; (R. 62).

complete transcript of the record and proceedings of the said Circuit Court of Appeals had in case numbered and entitled on its docket 8834, Commissioner of Internal Revenue, Petitioner, against James R. Washer, Executor, Estate of Benjamin Seelig Washer, Respondent, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States and that the decree herein of such Circuit Court of Appeals be reversed by the Court, and for such other and further relief as to this Court may seem proper.

Dated: July 14, 1942.

EUGENE L. GAREY,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. .....

COMMISSIONER OF INTERNAL REVENUE,
Respondent and
Petitioner below,

against

JAMES R. WASHER, Executor, Estate of
Benjamin Seelig Washer,
Petitioner and
Respondent below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions of the Courts Below

The opinion of the Board of Tax Appeals is not reported, but appears in the Record (R. 15); the opinion of the Circuit Court of Appeals for the Sixth Circuit, dated April 16, 1942, is reported at 127 F. (2d) 446 and appears in the Record (R. 58-63).

II

Jurisdiction

(1) The date of the decree to be reviewed is April 16, 1942.

(2) The statutory provision which sustains the jurisdiction of this Court is Judicial Code Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938; U. S. C. A. Title 28, §347.

III

The Question Presented

The question presented to the Court on this record is whether the inclusion of the entire proceeds of the life insurance policies on decedent's life in his gross estate is contrary to the decisions of this Court and in conflict with the decisions of various circuit courts of appeal and an unwarranted extension of the applicable statute (§302(g) of the Revenue Act of 1926).

IV

Statement of the Case

The essential facts of the case are fully stated in the accompanying petition for certiorari and in the interest of brevity are not repeated here. The facts have been stipulated by the parties (R. 27-51). Any necessary elaboration of the facts on the points involved will be made in the course of the argument which follows:

V

Specification of Errors

1. The Court erred in holding that the decedent retained legal incidents of ownership in all or any of the policies of insurance upon his life within the contemplation of Section 302(g) of the Revenue Act of 1926.

2. The Court erred in permitting respondent to claim that the decedent retained legal incidents of ownership in all or any of the said policies in view of the express acknowledgment by the respondent in his notice of deficiency addressed to the petitioner that the decedent at the time of his death did not possess any legal incidents of ownership whatever in said policies.

3. The Court erred in holding that the entire proceeds of all of the policies were includible in the taxable estate of the decedent and in not limiting the same to the value of the interest retained therein by the decedent.

4. The Court erred in holding that the proceeds of policies of insurance which were contracted for prior to February 24, 1919, the effective date of the Revenue Act of 1918, were includible within the gross estate of the decedent for estate tax purposes.

VI

Summary of the Argument

(a) Section 302(g) of the Revenue Act of 1926 does not require the inclusion within his gross estate of all or any of the proceeds of the policies on the life of the decedent because the decedent possessed no legal incidents of ownership in said policies prior to his death.

(b) The applicability of Section 302(g) was not properly before the Circuit Court of Appeals and the said Court should not have considered this statute.

(c) In any event, the Circuit Court of Appeals should have limited the amount of the proceeds of the policies includible within the gross estate of the decedent to the value of the interest retained by the decedent in such policies.

(d) In any event, the Circuit Court of Appeals should have excluded the proceeds of all policies contracted for prior to the effective date of the Revenue Act of 1918.

VII

Argument

POINT A

Section 302(g) of the Revenue Act of 1926 does not require the inclusion of all or any of the proceeds of the policies on the life of the decedent within his gross estate because the decedent possessed no legal incidents of ownership in said policies prior to his death.

The application of Section 302(g) of the Revenue Act of 1926, as amended by the Act of 1934, has been consistently construed as contingent upon the insured possessing "legal incidents of ownership" in the policies at the time of his death. Beginning with *Chase Nat. Bank* v. *United States,* 278 U. S. 327, 73 L. ed. 404, and continuing down to the present, this doctrine has been recognized and enunciated in a long line of cases, including:

Bingham v. *United States,* 296 U. S. 211, 80 L. ed. 160;

Industrial Trust Co. v. *United States,* 296 U. S. 220, 80 L. ed. 191;
Commissioner v. *Kellogg* (C. C. A. 3), 119 F. (2d) 54;
Levy's Estate v. *Commissioner* (C. C. A. 2), 65 F. (2d) 412;
Walker v. *United States* (C. C. A. 8), 83 F. (2d) 103.

This construction had been accepted by the Treasury Department, whose regulations from time to time have contained various interpretations of "legal incidents of ownership" (see Art. 25 of Reg. 80 [1934, 1937 Ed.], as amended by T. D. 5032, 1940-1941 Cum. Bull. 427).

The Commissioner in his notice of deficiency (R. 11) likewise concurred in the settled interpretation of this section when he stated:

> "The surrender by the decedent of all his rights and benefits under the policies in question, subject however to said rights and benefits being restored to him with the consent of the beneficiary, deprived the decedent of all incidents of ownership in the policies."

The Commissioner, however, in the Circuit Court of Appeals urged that the decedent had possessed legal incidents of ownership in the policies sufficient to warrant the inclusion of the proceeds thereof in the decedent's gross estate under the provisions of Section 302(g).

The Circuit Court adopted the contention urged by the Commissioner. The Court based its opinion upon the language of this Court in *Helvering* v. *Hallock,* 309 U. S. 106, 84 L. ed. 604, and held that where a possibility of reverter remained, however remote, the transfer took effect only upon death, and that the death of the insured was the identifiable event determining both the incidence of the tax and its measure.

It is submitted that the construction placed upon the *Hallock* case, *supra,* is in direct conflict with *Bingham* v.

United States, supra, and *Industrial Trust Co.* v. *United States, supra.* The opinion in the *Hallock* case does not refer to, much less overrule, either of these decisions, and it is submitted that in the absence of a definite pronouncement by this Court to the contrary they retain their vitality and binding effect.

The *Hallock* case dealt with the interpretation of Section 302(c), since it was concerned with the interest retained by the settlor of an *inter vivos* trust, and not with the contingent rights reserved by the insured under policies of life insurance. The extension, therefore, of the doctrine of the *Hallock* case to insurance cases required the Circuit Court of Appeals to hold that the *Hallock* case impliedly overruled the *Bingham* and *Industrial Trust Co.* cases, *supra,* despite the fact that no reference is to be found to these cases in the *Hallock* case. It is submitted that in view of the countless policies of insurance presenting similar problems, this Court should finally settle the proper application of the doctrine of the *Hallock* case.*

The difference between the reservation by an insured of a right which is dependent upon an infinitestimal chance and the reservation of a similar right by the settlor of a trust is emphasized by the impact of Section 302(g) as contrasted with 302(c). Thus the Circuit Court in the instant case held the entire proceeds of the policies taxable. On the other hand, it is well settled that only the value of the interest reserved by the grantor of a trust is taxable. *Helvering* v. *Hallock, supra; Commissioner* v. *McLean,* 127 F. (2d) 942.

Beyond the differences between the statutes involved and between an *inter vivos* trust and insurance, the facts in

---

* The necessity for clarification of the principle of the *Hallock* case is evidenced in the opinion of the Circuit Court of Appeals for the Fifth Circuit in *Commissioner* v. *McLean,* 127 F. (2d) 942, where the Court said:

> "For, since *Sanford* and *Hallock, supra,* came down to confuse and confound followers and expounders of gift tax law, the voices of both Board members and Circuit Judges are merely voices crying in the wilderness, and perhaps until the Supreme Court has spoken authoritatively on the question they would do best to decide the questions posed with as little bewordling and as few reasons as possible. (Cf. Paul Federal Estate and Gift Taxation, Chapters 7 and 17.)"

the instant case warrant, it is submitted, different treatment from that accorded the taxpayer in the *Hallock* case. In the *Hallock* case the settlor became repossessed of his property in the event that the life tenant predeceased him. This was certainly a not unlikely contingency. *Per contra*, in the instant case the decedent's estate would have benefited only in the concededly "extremely remote" contingency of the beneficiary surviving her two sons and grandchildren and not receiving the total proceeds of the policies prior to her death.

In this aspect the case resembles more closely the *Bingham* and *Industrial Trust Co.* cases, *supra*, where the proceeds were payable to the wife of the decedent and, if she predeceased the insured, to his children, and, if none then living, to his legal representatives. In the instant case the contingency includes grandchildren and to that extent is even more remote than those involved in the *Bingham* and *Industrial Trust Co.* cases.

Since the decision of this Court in the *Hallock* case, *supra*, the Circuit Court of Appeals for the Third Circuit has held in *Commissioner* v. *Kellogg*, 119 F. (2d) 54, that contingencies similarly remote are to be disregarded in determining the gross estate of the settlor of a trust.

The only other possibility whereby the decedent could have acquired control over his policies of insurance or the proceeds therefrom was in the event of the prior death of the beneficiary. In such event, it is true, decedent would have been entitled to exercise the right of revocation and similar rights under the policies. This was neither a possibility of reverter nor anything resembling the same. It was at most a contingent power of revocation, and the holding of the Circuit Court of Appeals, therefore, that such reservation brought the case within the principle of the *Hallock* decision is not only a further and unwarranted extension of that case but is contrary to the decision of other circuit courts of appeals decided since the *Hallock* case and with that decision before them.

Commissioner v. *Betts* (C. C. A. 7, Nov. 26, 1941), 123 F. (2d) 534;
Helvering v. *Dunning* (C. C. A. 4, Mar. 10, 1941), 118 F. (2d) 341.

See also:

Reinecke v. *Northern Trust Co.*, 278 U. S. 339, 73 L. ed. 410.

Thus, in the *Betts* case, *supra*, the Court said (p. 538):

> "There was not vested in the grantor power to revest in himself title to any part of the corpus of the estate. He had the remote power, if he survived the beneficiaries, to revoke the trust, but this was not vested in him but was remote, contingent and uncertain with no assurance of its ever coming into existence. Thus in *Helvering* v. *Dunning*, 4 Cir., 118 F. 2d 341, 343 the court approved this language: 'The grantor is again immune from taxation where he retains only a contingent power of revocation. * * *'"

POINT B

The applicability of Section 302(g) was not properly before the Circuit Court of Appeals and the said Court should not have considered this statute.

The statutory notice of deficiency (§501, Revenue Act of 1934) sent to the petitioner by respondent, Commissioner of Internal Revenue (R. 9-13) contained the following statement (R. 11):

> "The surrender by the decedent of all his rights and benefits under the policies in question, subject, however, to said rights and benefits being restored to him with the consent of the beneficiary, deprived the decedent of all incidents of ownership in the policies, and having no incidents of ownership, the policies are not taxable unless some provision of the Revenue Act not predicated on the ownership of an economic interest in the policies brings them within the scope of the Act. That purpose is effected by Section 302(d)."

This specific acknowledgment by respondent that the decedent possessed no legal incidents of ownership in the policies and that if the proceeds thereof were includible in the decedent's estate such result could be affected only by Section 302(d) precludes the Commissioner from urging at a later stage in the proceeding, e.g., on appeal to the circuit court of appeals, that the decedent possessed legal incidents of ownership in the policies and that consequently they are taxable within the provisions of Section 302(g).

The Circuit Court of Appeals dismissed this contention of petitioner upon the asserted authority of *Hormel* v. *Helvering,* 312 U. S. 552, 85 L. ed. 1037, and *Helvering* v. *Richter,* 312 U. S. 561, 85 L. ed. 1043.

It is submitted, however, that the instant case goes beyond a mere failure on the part of the Commissioner to assert the applicability of Section 302(g) in his notice of deficiency. Rather, the Commissioner expressly acknowledged that no legal incidents of ownership existed and consequently must be taken to have waived all claim as to the applicability of Section 302(g). In this aspect the case is within the principle of the following decisions of this Court:

Helvering v. *Wood,* 309 U. S. 344, 84 L. ed. 796;
Helvering v. *Tex-Penn Oil Co.* 300 U. S. 481, 81 L. ed. 755;
Helvering v. *Salvage,* 297 U. S. 106, 80 L. ed. 511;
General Utilities & Operating Co. v. *Helvering,* 296 U. S. 200, 80 L. ed. 154.

It is submitted that the notice of deficiency is analogous to a complaint in a civil action. The sole issue tendered was the applicability of Section 302(d). To permit the Commissioner to withdraw his express waiver of Section 302(g) at a later stage in the proceeding and after the petitioner committed the estate to litigation on the only issue tendered is not to do "as justice may require" (U. S. C. A., Title 26, §1141).

POINT C

In any event, the Circuit Court of Appeals should have limited the amount of the proceeds of the policies includible within the gross estate of the decedent to the value of the interest retained by the decedent in such policies.

As we have seen, the Circuit Court of Appeals conceded in its opinion in this case that the contingencies whereby the decedent might have reaped some advantages from the policies were "unlike those in the Hallock case, extremely remote". Nevertheless, in the *Hallock* case the amount included in the gross estate of the settlor of the trust was limited to the value of the "possibility of reverter" reserved to him.

The Court of Appeals refused, however, to limit the amount to be included in the gross estate of the decedent to the value of the possibility of reverter which it held existed. It apparently held that the "possibility of reverter" in the instant case was "an intangible element in respect to value, and incapable of measurement" (R. 62).

It is submitted that this holding is contrary to the decisions in the *Hallock* case and in *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339, 347-8, *supra*. It is also in conflict with the decisions of the Circuit Court of Appeals for the Fifth Circuit in *Commissioner* v. *McLean*, 127 F. (2d) 942, *supra*, and with the Court of Claims in *Central Nat. Bank of Cleveland* v. *United States*, 41 F. Supp. 239, 247-8. In the *McLean* case the argument that the possibility of reverter was incapable of measurement was rejected. In the *Central Bank* case it was specifically held that the deficiency was to be computed upon the value only of the interest found to have been retained and transferred by the death of the decedent.

POINT D

In any event, the Circuit Court of Appeals should have excluded the proceeds of all policies contracted for prior to the effective date of the Revenue Act of 1918.

Six of the policies involved were contracted for prior to the effective date of the Revenue Act of 1918 (R. 32). It is submitted that as to such policies Section 302(g) is not applicable.

Bingham v. *United States, supra;*
Lewellyn v. *Frick,* 268 U. S. 238, 69 L. ed. 934;
Helvering v. *Parker* (C. C. A. 8), 84 F. (2d) 838.

Irrespective of the effect of the *Hallock* case upon the *Bingham* and *Industrial Trust Co.* cases, *supra,* it is submitted that the *Hallock* case in no way overrules or casts doubt upon the doctrine of those two cases insofar as they held that policies written before the Revenue Act of 1918 were beyond the reach of Section 302(g).

CONCLUSION

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined, and that the decree of the United States Circuit Court of Appeals for the Sixth Circuit should be reversed and the decision of the United States Board of Tax Appeals affirmed in order that justice may be done to petitioner; that to such an end a writ of certiorari should be granted and this Court should review the decision of

the United States Circuit Court of Appeals for the Sixth Circuit and finally reverse it.

Respectfully submitted,

EUGENE L. GAREY,
Counsel for Petitioner,
63 Wall Street,
New York City.

WILLIAM HELFER,
PETER KEBER,
FRANK X. CRONAN,
of Counsel.